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No. 88-915

In The

Supreme Court of the United States

October Term, 1988

TEAMSTERS LOCAL 315,

Petitioner,

vs.

UNION OIL COMPANY OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Ninth Circuit Court of Appeals properly apply the principles enunciated by this Court in *AT&T Technologies, Inc. v. Communications Workers of America,* 475 U.S. 643 (1986) when it held that the dispute between the parties concerning medical competence of the work force was not arbitrable in light of the strictly circumscribed clauses governing arbitration in the parties' collective bargaining agreement and the undisputed evidence of the parties' collective bargaining history?

LIST PURSUANT TO SUPREME COURT RULES, RULE 28.1

Unocal Corporation

Union Oil Company of California

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Union Oil Company of California respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking reversal of the Ninth Circuit's opinion in this case. That opinion is reported at 856 F.2d 1307 (9th Cir. 1988).

STATEMENT OF THE CASE[1]

I. Relevant Contract Clauses.

Respondent Union Oil Company of California ("Unocal" or "the Company") and Petitioner Teamsters Local 315 ("the Union" or "Local 315") are parties to a collective bargaining agreement which contains severely limited grievance and arbitration provisions. Specifically, Article IX, Section E, paragraph 3 of the contract states:

> Only actions of the Company which are alleged to be violations of duties or obligations *expressed* in one or more of the written provisions of this Agreement shall be subject to the grievance and arbitration procedure. [Emphasis added].

The agreement also contains a management rights clause which further reinforces the narrow scope of the arbitration clause.[2] Article XXII, section B states:

> It is understood and agreed by the Union that, *except as abridged by a specific provision* of this Agreement, the Company reserves and retains the right to exercise, solely and exclusively, all lawful power to manage and control its business and its work forces, and to contract with others for the performance of any required work. The *exercise of all lawful management rights which are not abridged by a specific provision of this Agreement shall not be subject to arbitration* under Article IX above. (App. A, p. 5, emphasis added).

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[1] Respondent is satisfied with Petitioner's statements concerning *Opinions Below, Jurisdiction and Statutory Provisions Involved* (Pet., pp. 2-3). Accordingly, this Brief in Opposition does not repeat that information. *See* Supreme Court Rules, Rule 34.1(d), (e), (f); Rule 34.2.

[2] This clause is set forth in its entirety in Appendix A, *infra*.

II. The Parties' Bargaining History.

Since 1971, the Company and the Union have had a continuous collective bargaining relationship. Commencing with the first labor agreement signed by the parties, the grievance and arbitration provisions have remained virtually unchanged.[3] These provisions differ from "standard form" arbitration clauses found in most other collective bargaining agreements because they provide *strict* limitations on the types of disputes which may be submitted to arbitration. Specifically, the parties' contract always has limited the scope of arbitrable disputes *only* to those which allege violations of duties or obligations *expressed in one or more of the written provisions.*

This narrow limitation on arbitration was drafted intentionally. Though other employers may permit "any question concerning the interpretation of the agreement" to be submitted to an arbitrator, Unocal always has been adamantly opposed to such a provision. Thus, the Company bargained for – and obtained – severe restrictions on the types of disputes that could be submitted to arbitration.

To emphasize its commitment to strictly circumscribe the scope of arbitrable disputes, the Company also negotiated a complementary management rights clause. This clause reserves to the Company the sole and exclusive right to manage its work forces *unless* that right has been

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[3] The grievance and arbitration provisions have been included as Appendix C to the Petition for Writ of Certiorari. Thus, those sections will not be reprinted in Respondent's Brief in Opposition.

abridged by a *specific* provision of the agreement. Furthermore, this clause expressly *exempts* from arbitration, Company decisions rendered pursuant to the management rights clause.

The parties' bargaining history reveals that the Union attempted, on several occasions, to secure a modification of the arbitration clause. During the 1974 negotiations, for example, the Union attempted to expand the grievance procedure. The Company rejected this Union proposal, and the grievance and arbitration provisions remained unchanged. During negotiations for the 1977 contract, the Union again proposed a change in these provisions; it proposed that "any question concerning the interpretation of the contract" be subject to grievance and arbitration. As it had done in 1974, the Company rejected the Union's demand and the arbitration provision remained unchanged.

The parties' collective bargaining history also establishes that the Company always has been committed to retaining its right to determine an employee's physical and medical qualifications to work. For example, this commitment is reflected in the contract provisions governing payment of sick pay allowance which state in relevant part:

> Payment of sick pay allowance will cease . . . when the employee returns to work or is released by a doctor to return to work *and subject to verification by a physician designated by the Company.* (App. A, p. 3, emphasis added).[4]

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[4] Article XVI of the agreement governing sick pay is set forth in its entirety in Appendix A, *infra.*

The intent of the Company to unilaterally decide the physical and medical competence of its employees is further reflected in the stance Unocal has taken during labor negotiations for the past 17 years. For example, during the 1980 negotiations, an issue arose regarding the use of a third physician to resolve disputes over medical qualifications of employees. During those negotiations, the Union proposed that the following language be added to the contract:

> If a report of a Company appointed physician adversely affects the employment status of a permanent employee, such employee may have a physician of his selection conduct a second examination. . . .
>
> If the Company's physician and the employee's physician disagree, they shall select an independent third physician who is expert in the ailment being considered.
>
> If the third physician considers the original report to be erroneous, any action taken by the Company therefrom shall be revoked.

In accordance with its commitment not to abrogate its right to determine the medical competence of employees, the Company rejected this Union proposal. The Union dropped this issue.

III. The Underlying Grievance.

The dispute in the underlying case concerns whether an employee, Norman Simon, is medically competent to return to work. Simon was injured on the job and, as a result, was unable to work. Thus, Simon received sick pay allowance in accordance with Article XVI of the contract until all available benefits had been exhausted.

However, regardless of the cessation of sick pay benefits, Simon remains employed by the Company and continues to accrue seniority in accordance with Article III of the parties' agreement.[5]

Simon's physician believes that Simon is capable of returning to work. Nevertheless, upon review of Simon's job responsibilities, the Company physician has determined that Simon cannot safely perform his duties. Therefore, acting on the recommendation of its physician, Unocal has refused to reinstate Simon.

Simon filed a grievance over this management decision. The Union then corresponded with the Company, informing it that Local 315 considered Simon's grievance to be arbitrable on the ground that unwarranted refusal to reinstate Simon jeopardized his seniority under Article III. However, the Union never specified how Simon's seniority was being threatened. Alternatively, the Union proposed that Simon's condition be evaluated by a third physician whose opinion would be binding on the parties. Consistent with its stated position on the right to determine medical competence, the Company rejected this proposal.

The Company also advised the Union that it would not arbitrate Simon's grievance because the decision not to reinstate Simon was a management decision rendered pursuant to the management rights clause of the contract. Therefore, this management decision was outside the scope of the arbitration provision of Article IX.

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[5] The Union admitted this fact throughout the proceedings below.

The Union moved to compel arbitration in California Superior Court. The Company removed the case to the United States District Court for the Northern District of California and moved for summary judgment on the ground that the collective bargaining agreement and bargaining history established the parties' lack of intent to submit to arbitration disputes concerning the medical qualifications of the work force. The Union filed a cross-motion for summary judgment.

On July 8, 1987, the district court granted the Union's motion compelling the Company to arbitrate the underlying dispute. The Company appealed that judgment to the Ninth Circuit Court of Appeals. On September 2, 1988, the court below filed its opinion and held that the strict, narrow terms of the collective bargaining agreement, and the parties' bargaining history, established that the parties did not intend to arbitrate disputes concerning the medical competence of the work force.

REASONS FOR DENYING THE WRIT

I. A Writ Of Certiorari Should Not Issue Merely To Review Evidence And The Parties' Different Views Of Their Factual Positions.

The granting of a writ of certiorari is discretionary and depends on several factors other than the perceived correctness of the decision below. *Superintendent v. Hill*, 472 U.S. 445, 460 (1985), citing *Ross v. Moffitt*, 417 U.S. 600, 616-617 (1974). Moreover, "the merits of an isolated case have only an oblique relevance to the question whether a grant of certiorari is consistent with the sound

administration of this Court's discretionary docket." *Superintendent v. Hill*, 472 U.S. at 460, n.4, quoting *Ponte v. Real*, 471 U.S. 491, 501-502 (1985) (Stevens, J., concurring). Finally, this Court "[does] not grant a certiorari to review evidence and discuss specific facts." *Superintendent v. Hill*, 472 U.S. at 460-461, quoting *United States v. Johnson*, 268 U.S. 220, 227 (1925).

Petitioner advises this Court that granting certiorari is necessary to remedy the Ninth Circuit's "unwarranted departure" from well-established precedent in the field of labor arbitration. (pet., p. 15). Respondent, however, respectfully submits that Petitioner has done nothing more than voice its dissatisfaction with the result in the court below. Moreover, as discussed, *infra*, the Ninth Circuit properly applied long-standing principles governing the arbitrability of disputes to reach its conclusion that the parties' dispute is outside the scope of the arbitration provisions of the collective bargaining agreement. Therefore, Respondent contends that the Ninth Circuit's decision is correct. As such, the petition should be denied.

II. The Decision Below Is Correct Because The Ninth Circuit Properly Applied The Principles Set Forth In This Court's Decisions Governing Labor Arbitration.

The Union's primary contention in support of its petition for writ of certiorari is that the court below erred by reviewing the parties' labor agreement to locate language relevant to the merits of the underlying dispute (Pet., p. 22). In so doing, the Union argues, the Ninth Circuit overstepped its bounds and exceeded the scope of

authority granted to it by this Court in the "Steelworkers Trilogy."[6] This "unwarranted departure" from precedent thus serves as the basis for the Union's contention that this case merits this Court's discretionary review.

To assert these contentions, however, Local 315 misapprehends the rules of law this Court set forth in *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986).[7] Furthermore, the Union does not

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[6] *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

[7] Moreover, despite the comprehensiveness of that decision, the Union suggests that "this case is to be resolved by a straightforward application of the principles stated in . . . [*Steelworkers v.*] *American Manufacturing*" (Pet., pp. 15-16). Apparently, the basis for this contention is the purported factual similarities between *American Mfg. Co.* and the present case. Thus, in an effort to utilize what it perceives as a favorable factual decision, the Union contends that *American Mfg. Co.* is persuasive because there is little difference between the arbitration clause in that case and the one at issue here. Presumably, this is so because both cases allegedly involve "interpretation and application" of the agreement.

The Union's reliance on this *Steelworkers* decision is misplaced because Local 315 ignores the dispositive difference between *American Mfg. Co.* and the present case: the fact that the arbitration clause in *Steelworkers* permitted arbitration of *any* dispute concerning the agreement – express, implied, or otherwise. Conversely, the clause in the present case unambiguously restricts arbitration to alleged violations of *express written provisions* of the agreement. This language necessarily negates arbitration of *implied* contract provisions. Therefore, *American Mfg. Co.* is inapposite and the Union's contentions lack merit.

comprehend the role this Court has imposed upon the lower courts when confronting the question of arbitrability.

In *AT&T Technologies*, this Court identified four principles governing the arbitrability of disputes: (1) arbitration is a matter of contract; (2) the court must decide the threshold issue of intent to arbitrate; (3) in deciding this issue, a court cannot rule on the merits underlying the dispute; and (4) the presumption in favor of arbitration may be overcome *either* by an express provision *excluding* certain grievances *or* "forceful evidence" of a purpose to exclude claims from that forum. *Id.* at 648-651, emphasis added. These principles establish a framework for the analysis which courts must conduct when deciding the threshold issue of intent to arbitrate.

When the court below applied these principles to the facts of the present case, it concluded that the parties did *not* intend to arbitrate disputes concerning the medical competence of the work force. Not only does the parties' labor contract expressly limit arbitration, the parties' 17-year bargaining history constitutes forceful evidence of the Company's intent to exclude from arbitration disputes concerning the medical competence of the work force.

Despite the correct application of these guiding principles by the Ninth Circuit, Local 315 argues that anything other than a superficial perusal of the contractual arbitration provisions violates the third tenet set forth in *AT&T Technologies*. Thus, the Union contends that a court cannot properly examine all the terms in a collective

bargaining agreement to ascertain whether specific disputes are arbitrable. According to the Union, this is so because such an examination impermissibly intrudes into the merits of the dispute.

The Company submits that the Union has misconstrued the permissible scope of a lower court's examination of the collective bargaining agreement. Furthermore, Local 315 apparently does not comprehend the duty this Court has imposed on lower courts when ruling on arbitrability. As explained below, the Ninth Circuit correctly performed its obligations to ascertain whether the parties intended disputes of the nature at issue here – those concerning the medical competence of employees – to be arbitrable. Moreover, in so doing, the court below carefully avoided examining the merits of the dispute. Thus, contrary to Local 315's contentions, the lower court ruling is not an "unwarranted departure" from past precedent and the Union's petition should be denied.

A. Although A Court Cannot Rule On The Merits Of A Dispute When Deciding The Threshold Issue Of Arbitrability, It Must Examine The *Nature* Of The Dispute To Properly Make This Determination.

The initial examination of a contract for purposes of determining arbitrability of disputes commences with the language of the parties' arbitration clause and any express exclusions therefrom. *AT&T Technologies*, 475 U.S. 643, 648-650. However, no decision of this Court has prohibited a lower court from scrutinizing the entire agreement to ascertain the parties' intent with respect to

the arbitrability of types of disputes. Thus, the Union's suggestions to the contrary lack merit.

Once a court has determined the scope of the arbitration provisions, its next task is to examine the parties' dispute in light of the contractual limits on arbitration. To perform this duty, the court must examine the *nature* of the dispute to determine "whether the claim is 'on its face governed by the contract.' " *Montgomery Mailers' Union No. 127 v. The Advertiser Company*, 827 F.2d 709, 714 (11th Cir. 1987), citing *American Manufacturing Co.*, 363 U.S. 564, 568. The Third Circuit also succinctly expressed a court's duty when it said:

> Careful review of *AT&T Technologies* illustrates that the Supreme Court has not weakened its enthusiastic endorsement of arbitration in labor disputes. However, the message is clear that courts must *carefully analyze the contractual language* to determine whether a particular dispute is arbitrable. *Although answering that question may entail some probing of preliminary substantive issues, that requirement will not relieve courts of the duty to decide arbitrability.*

Morristown Daily Record, Inc. v. Graphic Communications Union, Local 8N, 832 F.2d 31, 33-34 (3d. Cir. 1987) (emphasis added).

In the present case, the dispute between the parties concerns the medical fitness of an employee to return to work. The court below pinpointed the union's difficulty in contending that this dispute was arbitrable when it said:

> Aware that it must allege a violation of an express provision of the collective-bargaining agreement, the Union contends that Unocal has violated the employee's seniority rights under Article III of the

> contract by not reinstating the disabled employee. This contention, however, is conclusory and thus insufficient to allege the existence of an arbitrable controversy. The Union fails to allege how Simon's express seniority rights under the agreement have been violated. Indeed, the Union concedes in its brief and petition to compel arbitration that Simon *continues to accrue seniority*. Accordingly, the Union's allegation of a violation of Article III without supporting facts that would support such a violation is merely conclusory.
>
> *The agreement's seniority provisions in Article III contain nothing about disputes over the medical fitness of an employee to return to work*. Given the express language of the Agreement and the Union's acknowledgment that Simon's seniority continues to accrue, the Union fails to make out a violation of an express provision.

Teamsters Local 315 v. Union Oil Co. of California, 856 F.2d 1307, 1311 (9th Cir. 1988) (emphasis added; footnote omitted).

Local 315 challenges the propriety of the Ninth Circuit's examination of the language in the parties' agreement. The Union asserts that a mere statement that the seniority clause has been violated is an adequate basis upon which to order arbitration. Thus, according to the Union, the court below erred in going beyond that conclusory allegation to ascertain the parties' intent. In the Union's words:

> As the Steelworkers Trilogy specifies, the court below exceeded its authority in searching the agreement for language relevant to the merits of the dispute. Arbitration should have been ordered once it is determined that the parties are in dispute as to the interpretation and application of the seniority provisions, which of course are express, written provisions of the agreement. (Pet., p. 22).

The Union's argument is flawed. In accordance with the teaching of *AT&T Technologies*, the court below was obligated to carefully examine the language of the contract to determine whether disputes concerning medical competence are governed by the collective bargaining agreement.[8] Moreover, contrary to the Union's assertion, this limited inquiry into the *nature* of the dispute does not embroil the court in the rightness or wrongness of the Company's decision that Simon is not medically fit to work. Rather, it merely ascertains whether the negotiated scope of the arbitration provisions encompasses this type of dispute.

Additionally, the Union's argument is flawed because of Local 315's mischaracterization of the dispute.[9] The Union states the issue to be whether denying Simon the "right to work" violates the seniority clause. Even if this

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[8] The Union also misunderstands the meaning of the term "determined" and the court's role in ascertaining the scope of the agreement. Implicit in the Union's argument is the inference that mere mention that seniority is implicated "determines" that the parties are in dispute regarding the seniority clause. This is not the case. Indeed, given the meaning of "determine," the court cannot deduce whether the seniority clause is in dispute unless it ascertains this fact after consideration, investigation and reasoning. *See Webster's Third New International Dictionary* (3d Ed., 1971), G. & C. Merriam Company, Springfield, Mass., p. 616.

[9] Contrary to the Union's statements, the dispute between the parties does not concern the seniority clause at all. Instead, it concerns the Company's management right to ascertain the medical fitness of its employees to work. Undoubtedly, the contract is silent with respect to this issue.

Court adopted that definition of the dispute, the Union's contentions still would fail because the "right to work" is not an express written provision of the Contract. As such, disputes concerning the "right to work" are not arbitrable.

The Union attempts to circumvent this problem by arguing that whether the seniority clause includes an *implied* right to work is not at issue for the courts. Instead, the Union contends, this issue goes to the merits of the dispute. Therefore, only an arbitrator may examine the contract language to determine whether seniority implies a right to work. This contention assumes too much.

Summarizing the primary provisions of the parties' labor agreement, it is indisputable that Article IX requires an alleged violation of an express written contract term as a condition precedent to arbitration. This requirement is not only contained in Article IX, paragraph A governing the arbitrability of grievances, it also is repeated in paragraph D addressing arbitration procedure, and paragraph E governing limitations on arbitration. Thus, the parties unquestionably intended to make clear that only *express* terms of the contract would be subject to arbitration.

Additionally, to ensure that there would be no ambiguity regarding the scope of arbitration or the source of any rights in that regard, the parties drafted paragraphs A and B of Article XXII. These provisions unequivocally state that the *source* of any rights asserted in arbitration must be contained within the *express* provisions of the

contract. Furthermore, the management rights clause reiterates the Company's *sole* right to manage its work force *unless* that right expressly has been abrogated by a written provision of the contract.

Despite these unambiguous contract provisions, the Union insists that the seniority clause is at issue because "the function of a seniority clause in the circumstances of this case is to determine the right to work." (Pet., p. 22). However, this contention is fallacious because it requires the court to *imply* terms into the seniority clause before compelling arbitration. Manifestly, this would violate the parties' intent to arbitrate only violations of *express*, written provisions of the agreement.

B. Undisputed Evidence Of Bargaining History Constitutes "Forceful Evidence" Of Unocal's Intent Not To Submit Disputes Of This Nature To Arbitration.

The Union's petition also highlights the undisputed evidence of bargaining history submitted by Unocal to the district court and reviewed by the court below. It then concludes that "all of this is at best equivocal, and much is not material to the question of arbitrability." (Pet., pp. 23-24). Presumably, the basis for the argument is this Court's statements favoring a presumption of arbitrability when labor contracts contain arbitration clauses. *See AT&T Technologies*, 475 U.S. 643, 650-651. The Union thus argues that undisputed evidence of the parties' bargaining history is inadequate to rebut the presumption favoring arbitration, although no rationale is offered for this statement.

The Company submits that the Union misperceives the purpose and function of this type of evidence. In the district court, the Company presented evidence demonstrating that it never accepted Union proposals to broaden the narrow language of the arbitration clause. The purpose of this evidence was to rebut the presumption favoring arbitration. The Union made no effort to refute the Company's evidence in that forum. However, the Union now takes the position – as it did in the court below – that the Company's evidence is not persuasive. Other than this assertion, there is no proffered reason why the court below should be barred from examining this undisputed evidence to ascertain whether Unocal ever intended to broaden the arbitration clause or permit third parties to examine employees for purposes of determining medical fitness. Indeed, despite the Union's subjective opinion of this undisputed evidence, the Ninth Circuit reviewed it extensively and found it "most important" on the issue of arbitrability. This was so, because without bargaining history to explain the genesis of the labor agreement, the court could not understand the significance of the parties' contract. Expressed in terms of Justice Brennan's concurrence in *American Mfg. Co.*, 363 U.S. 564, 570:

> Words in a collective bargaining agreement . . . are to be understood *only* by reference to the background which gave rise to their inclusion. [emphasis added].

In the present case, the background evidence of the parties' agreement reveals that arbitration was to be narrowly circumscribed and exclude disputes concerning the medical competence of the work force.

CONCLUSION

For the reasons stated, Respondent Union Oil Company of California respectfully submits that this Court should deny the Petition for Writ of Certiorari.

DATED: December 23, 1988

Respectfully submitted,

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APPENDIX A

ARTICLE XVI
SICK PAY

Regular full-time employees will be granted sick pay allowance for working time lost because of sickness or accident in accordance with the following provisions:

A. Employees will be eligible for sick pay allowance upon the completion of six (6) months of accumulated service with the Company

B. Upon completion of six (6) months' service, six (6) days of sick pay allowance at the employee's permanent assignment rate will be credited.

Thereafter, additional sick pay allowance will be accumulated at the rate of one (1) day for each completed month of service, plus three (3) days for each completed year of service to a maximum of one hundred and fifty (150) days. In no event will total accumulated sick pay allowance exceed one hundred and fifty (150) days.

C. Sick pay allowance for eligible employees will commence on the first (1st) scheduled working day lost because of illness or injury. If the employee cannot, due to sickness or injury, report for work as scheduled, it shall be the responsibility of the employee to notify the Company without undue delay of any such sickness or injury.

D. Fourteen (14) calendar days following the employee's return to his full-time regular schedule, any sick pay allowance accumulated during a period of sick leave will be credited and available for future periods of sick leave. Available days of sick pay allowance will be reduced by one full day for each scheduled workday the employee is absent due to sickness or injury and for which he receives sick pay. Sick pay

allowance will continue to be credited to the employee at the rate of one (1) day for each completed month of service, plus three (3) days for each completed year of service until a maximum of one hundred and fifty (150) days is reached.

E. Working time lost shall include only those hours normally and regularly scheduled at straight time. Sick pay allowance for scheduled working time lost due to sickness or injury will be at the vacation rate of pay. The amount of sick pay allowance payable will be reduced by any temporary disability benefits or indemnity that the employee may become entitled to under or by virtue of any Federal, State or other statutory disability benefits or Workers' Compensation Law. The sum of the two payments will equal the full sick pay allowance.

F. When the sick pay allowance is reduced by offsetting payments derived from California Disability Insurance or its alternate voluntary plan and these benefits are solely provided by tax or premium on the employee, such offsetting payments shall in turn be credited to the employee as follows:

1. Sick pay allowance will be credited to the extent that offsetting payments reduce the sick pay allowance and the credited amount will be converted to equivalent sick pay allowance days or fractions thereof.

2. These equivalent sick pay allowance days will be available for immediate or future use. This credit is in addition to days credited for completed service, but is subject to the maximum limitation set forth in Section B above.

G. *Payment of sick pay allowance will cease:*

1. When all available sick pay allowance benefits credited the employee have been used.

2. When the employee returns to work or is released by a doctor to return to work and subject to verification by a physician designated by the Company.

3. When service is terminated for any reason, including death and retirement.

H. Sick pay will not be allowed to an employee when absence from work is due to any of the following:

1. The willful intention of the employee to injure himself or another.

2. Use of narcotics except as prescribed by a physician.

3. Pregnancy.

4. Occupational disease or injury incurred while working for another employee.

5. Intoxication.

6. Dental conditions, except when the condition is disabling.

I. Sick pay allowance will not be granted for sickness or injury commencing during a leave of absence without pay for a period of more than thirty (30) consecutive days. Sick pay allowance will be granted for illness or injury commencing within an authorized leave of absence without pay of thirty (30) consecutive days or less and continuing beyond the scheduled date for return to work. If sickness or injury occurs during an approved leave of absence with pay, sick pay allowance will be granted for the normal number of scheduled work days during the period of sickness or injury. Sick pay allowance will not be charged for a recognized holiday for which the employee received holiday premium pay.

J. Sick pay allowance will not be granted to employees who become disabled due to sickness

or accident while they are on vacation except under the following conditions:

If an employee becomes disabled for one (1) week or more due to sickness or injury, then the full week or weeks of vacation remaining at the time the disability commenced may be cancelled and the employee placed on sick leave. Such disability shall be supported by medical evidence acceptable to the Company. The cancelled week or weeks of vacation will be rescheduled at a later date in the current year.

K. Sick pay allowance claims must be supported by proper medical evidence as required by the Company and are subject to verification by the Company.

L. For purposes of this Article XVI, a day of sick pay shall be eight (8) hours' straight-time pay. When an eligible employee working a ten (10) hour daily schedule shall lose time because of illness, he shall be allowed straight-time pay for scheduled working time lost but his accumulated sick pay balance will be charged in increment hours; i.e., ten (10) hours' sick pay shall be charged as one and one-fourth (1-1/4) days.

* * *

ARTICLE XXII
LIMITATIONS

A. This contract constitutes the entire agreement between the parties and is not subject to negotiations during its term. The express provisions of this Agreement shall be the sole source of any rights which may be asserted against the company in arbitration under Article IX above. Further, this contract can only be amended by written agreement.

B. It is understood and agreed by the Union that, except as abridged by a specific provision of this Agreement, the Company reserves and retains the right to exercise, solely and exclusively, all lawful power to manage and control its business and its work forces, and to contract with others for the performance of any required work. The exercise of all lawful management rights which are not abridged by a specific provision of this Agreement shall not be subject to arbitration under Article IX above.

C. Disputes concerning any liability or obligation which requires the construction or interpretation of any statute or law shall not be subject to arbitration hereunder (or eligible for processing under the grievance procedure). This Agreement shall not in any way interfere with the obligations of the parties hereto to comply with the State and Federal Laws, or of any rule, regulation or order issued by any governmental authority pertaining to matters covered herein. If any provision or provisions of this Agreement should be affected by State or Federal laws, or of any rule, regulation, or order issued by any governmental authority, or if any provision or provisions should be held invalid by a court of record, the remainder of the Agreement shall not be otherwise affected thereby.